

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ELLIOTT WILLIAMS, #0481914	§	
VS.	§	CIVIL ACTION NO. 6:17cv627
JEFFREY CATOE, ET AL.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This action case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On July 22, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 232), recommending that Defendants Assava, Dr. Shrode, and White's motion for summary judgment limited to the exhaustion of administrative remedies (Docket No. 193) be granted in part and denied in part. The Report further recommended that Plaintiff's claims against Defendants Assava and Dr. Shrode be dismissed without prejudice for Plaintiff's failure to exhaust his administrative remedies. As to Defendant White, the Report recommended that Plaintiff's claims against Defendant White for allegedly delaying Plaintiff's physical therapy appointments for December 22, 2016, and January 25, 2017, should be allowed to proceed. It was finally recommended that all other claims against Defendant White should be dismissed without prejudice for Plaintiff's failure to exhaust his administrative remedies. Plaintiff timely filed objections. Docket No. 244.

The Court reviews objected-to portions of the Magistrate Judge's Report and Recommendation de novo. *See* FED. R. CIV. P. 72 and 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court conducting a de novo

review examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Having reviewed Plaintiff's objections de novo, the Court concludes that the objections are without merit and that the findings and conclusions of the Magistrate Judge are correct. It is accordingly


ORDERED that the Report and Recommendation (Docket No. 232) is **ADOPTED**. It is further

ORDERED that Defendants Assava, Dr. Shrode, and White's Motion for Summary Judgment (Docket No. 193) is **GRANTED IN PART** and **DENIED IN PART**. It is

ORDERED that Plaintiff's claims against Defendants Assava and Dr. Shrode are **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to exhaust his administrative remedies. It is finally

ORDERED that Plaintiff's claims against Defendant White are **DISMISSED WITHOUT PREJUDICE** for failure to exhaust his administrative remedies, except for his claims against Defendant White for allegedly delaying Plaintiff's physical therapy appointments for December 22, 2016 and January 25, 2017. Plaintiff's claims against Defendant White for allegedly delaying Plaintiff's physical therapy appointments for December 22, 2016 and January 25, 2017 shall be allowed to proceed.

So **ORDERED** and **SIGNED** this 1st day of **September, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE